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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/524,428	02/15/2005	Michael Windsor Symons	6502-1045	6057
466	7590	12/14/2007		
YOUNG & THOMPSON 745 SOUTH 23RD STREET 2ND FLOOR ARLINGTON, VA 22202			EXAMINER COONEY, JOHN M	
			ART UNIT 1796	PAPER NUMBER
			MAIL DATE 12/14/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/524,428

**Applicant(s)**

SYMONS, MICHAEL WINDSOR

**Examiner**

John Cooney

**Art Unit**

1796

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 September 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 18-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 18-35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 February 2005 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

Applicant's arguments filed 9-20-07 have been fully considered but they are not persuasive.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 18-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wikne et al.(3,451,842) in view of Van Oost(5,931,595).

Wikne et al. discloses methods for manufacturing an impregnated open celled polymeric foamed article wherein a binder solution as claimed is administer and impregnated into the foam through the action of rollers and pressing followed by setting and drying (see the examples, as well as, the entire document). Though not specifically highlighted, the densities of applicants' claims are held to be elements readily envisioned from the disclosed teaching of open celled articles provided for by Wikne et al. Additionally, employment of multiple rollers for purpose of providing the rolling operations disclosed is held to be an operation readily envisioned from the teachings of Wikne et al. based on Wikne et al.'s encompassing disclosure of rolling.

Wikne et al. differs from applicants' claims in that it does not require feeding of the setting slurry through at least one of the rolling apparatuses. However, Van Oost (see the entire document) discloses devices for applying liquid products through perforated rollers for the purpose of providing controlled administration of the applied solution. Accordingly, it would have been obvious for one having ordinary skill in the art to have employed the roller device of Van Oost in applying the binder solution to the open cell article in the preparations of Wikne et al. for the purpose of controlling administration of the binder slurry, providing conservation of administered product, and promoting cleaner administration of the administered material in order to arrive at the processes of applicants' claims with the expectation of success in the absence of a showing of new or unexpected results.

Applicants' arguments have been considered. However, rejection is maintained.

Applicants' claims do not distinguish over the permeable rollers of the prior art in the patentable sense based on the term "perforated". Both relate to holes for passage of liquid. Applicants' claims further do not distinguish over the prior art based on the degrees of compression defined by the claims. Degrees of compression are not defined by the claims which would distinguish over the degrees identified by the prior art.

As to duplication of the rolling element/effect, it has long been held that duplication of parts has no patentable significance unless a new and unexpected result is produced. *In re Harza*, 274 F.2d 669, 124 USPQ 378 (CCPA 1960). Unexpected results based on this feature are not seen nor has it been demonstrated.

As to applicants' argument that the secondary teaching is not analogous art, it is held that the determination that a reference is from a non-analogous art is twofold. First, it is decided if the reference is within the field of inventor's endeavor. If it is not, then it must be determined whether the reference is reasonably pertinent to the particular problem with which inventor was involved. *In re Wood*, 202 USPQ 171, 174; *In re Clay*, 23 USPQ.2d 1058. {see also *In re Bigio*, 381 F.3d 1320, 72 USPQ2d 1209 (Fed. Cir. 2004) and M.P.E.P. 2141.01(a)}. The secondary teaching is maintained to be analogous art. Paint is a binder, and the teachings of this secondary teaching are at least reasonably pertinent to the particular problem with which inventor was involved.

Applicants' arguments pertaining to their showings of results have been considered. However, the assertions of results have not been demonstrated in fact and/or shown to be commensurate in scope with the scope of the claims as they currently stand.

Applicants' new claims have been considered based on the teachings of the combination of the prior art. However, the prior art is seen to provide rollers having a solid core component which is stationary to the degree required by the claims. Feed conduits are provided by the disclosures of the prior art to the degrees required by the claims as well as the means for delivering the binder to perforated/permeable surface of the roller. Other elements of the new claims are addressed in the arguments above.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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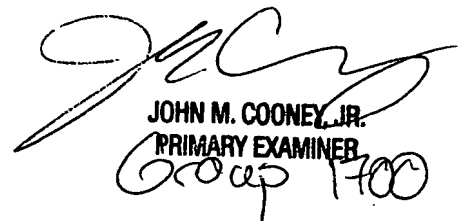
§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Cooney whose telephone number is 571-272-1070. The examiner can normally be reached on M-F from 9 to 6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck, can be reached on 571-272-1078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
JOHN M. COONEY, JR.  
PRIMARY EXAMINER  
Cooney 1796